

# FIA PTG

## PRINCIPAL TRADERS GROUP

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November 17, 2023

Vanessa Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: Nasdaq PHLX LLC; Notice of Filing of Proposed Rule Change to Amend Equity 4, Rules 3301A and 3301B to Establish New “Contra Midpoint Only” and “Contra Midpoint Only with Post-Only” Order Types and to Make Other Corresponding Changes to the Rulebook Release No. 34-98280; File No. SR-PHLX-2023-40

Dear Ms. Countryman:

The FIA Principal Traders Group (“FIA PTG”)<sup>1</sup> appreciates the opportunity to submit this letter to the Securities and Exchange Commission (“SEC” or the “Commission”) in response to the Nasdaq PHLX LLC (“PHLX” or “Exchange”) proposed rule change to amend various rules to establish new “Contra Midpoint Only” and “Contra Midpoint Only with Post-Only” order types (the “Proposal”).<sup>2</sup> Consistent with the letter FIA PTG filed on March 8, 2023 (“Nasdaq Letter”),<sup>3</sup> in response to a very similar proposal<sup>4</sup> by the Nasdaq Stock Market LLC (“Nasdaq”), we urge the Commission not to approve this Proposal.

Under the Proposal, the PHLX System will remove a Contra Midpoint Only (“CMO”) order automatically if a CMO is resting at the midpoint on the PSX Book, an incoming Order is priced through the price of the CMO, the CMO would otherwise trade against the incoming Order, and one or both of the following conditions apply:

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<sup>1</sup> FIA PTG is an association of firms, many of whom are broker-dealers, who trade their own capital on exchanges in futures, options and equities markets worldwide. FIA PTG members engage in manual, automated and hybrid methods of trading, and they are active in a wide variety of asset classes, including equities, fixed income, foreign exchange and commodities. FIA PTG member firms serve as a critical source of liquidity, allowing those who use the markets, including individual investors, to manage their risks and invest effectively. The presence of competitive professional traders contributing to price discovery and the provision of liquidity is a hallmark of well-functioning markets. FIA PTG advocates for open access to markets, transparency and data-driven policy.

<sup>2</sup> <https://www.sec.gov/files/rules/sro/phlx/2023/34-98280.pdf>.

<sup>3</sup> See: [Letter from Joanna Mallers, Secretary, FIA PTG, to Vanessa Countryman, Secretary, SEC, dated March 8, 2023, \(“Nasdaq Letter”\)](#).

<sup>4</sup> <https://www.sec.gov/files/rules/sro/nasdaq/2023/34-96601.pdf>.

- The incoming order is displayed and its size is greater than that of the resting CMO; or
- The incoming order is not displayed, it is priced at or better than the far side of the NBBO, and its size is greater than that of the resting CMO.

FIA PTG remains troubled by the non-public information provided to the CMO order sender when the CMO order is “removed.” Regardless of whether the CMO order is canceled as would have been the case with the earlier Nasdaq Proposal, or removed as is the case with this PHLX Proposal, the originator of the CMO order will still have access to information about the contra side order that no other participant will have. Specifically, the originator of the CMO order knows that the contra side order is larger than the CMO order because trades occurred that would have executed against the resting CMO order had the size of the contra side order been equal to or smaller than the resting CMO order’s size. Accordingly, as we stated in our Nasdaq Letter, the CMO order sender necessarily gains information that may not be available to any other market participant. The CMO order sender could discern that the opposing, unexecuted order exists, and profit from that information without the need to trade with it.

Again, we reiterate that this asymmetric advantage may be of particular significance since the two types of opposing orders that trigger the CMO removal are the types of orders that PHLX states are “indicative of a pending price shift” in the market; such orders have a high information value for traders. Therefore, the CMO order sender has a “Heads I win, Tails you lose” proposition. If the CMO order is executed, it is likely paired with an order that is not indicative of a price movement. If the CMO order is removed by the exchange, the originator gets advance notice of a potential price move signaled by the opposing order.

FIA PTG continues to believe that asymmetrical information does not result in better markets, and for this reason recommends the Commission not approve this Proposal. If you have any questions, please do not hesitate to contact Joanna Mallers at [jmallers@fia.org](mailto:jmallers@fia.org).

Respectfully,

FIA Principal Traders Group



Joanna Mallers  
Secretary

cc: Gary Gensler, Chair  
Hester M. Peirce, Commissioner  
Caroline A. Crenshaw, Commissioner  
Mark T. Uyeda, Commissioner  
Jaime Lizárraga, Commissioner